

SUPREME COURT OF COLORADO

2 East 14th Avenue 4th Floor
Denver, Colorado 80203

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2007)
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE
AND SUBMISSION CLAUSE FOR 2007-2008, #96

Petitioner:

JOSEPH B. BLAKE,
Objector,

v.

Respondents:

ERNEST L. DURAN, JR. and BRADLEY JOHNSON,
Proponents,

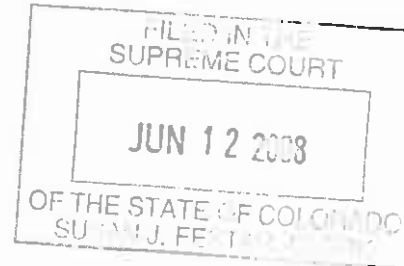
and

Title Board:

WILLIAM A. HOBBS, DANIEL L. CARTIN, and
GEOFFREY BLUE.

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Case No. 08SA179

PETITIONER'S ANSWER TO RESPONDENTS' OPENING BRIEF

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Joseph B. Blake, a registered elector of the State of Colorado, by and through his attorneys, Fairfield and Woods, P.C., hereby files this Answer Brief to the Title Board's Opening Brief concerning Proposed Initiative 2007-2008 #96 ("Cost of Living Wage Increase" or "Initiative").

INTRODUCTORY STATEMENT

This issue appears to be moot. The *Rocky Mountain News* and *The Denver Post* both reported on June 11, 2008 and June 12, 2008 respectively, that the proponents intend to withdraw this Initiative. Specifically, Ernest Duran, one of the two proponents of this measure announced that he was removing this ballot measure immediately. See <http://rockymountainnews.com>; <http://www.denverpost.com>.

ARGUMENT

The Bar to a Decrease in Wages Does not Carry Out the Purpose of the Initiative: To Increase Wages and Salaries Commensurate with an Increase in the Cost of Living.

Respondents sum up the purpose of the Initiative in one sentence: "Employers who regularly employ ten or more employees in the state of Colorado are required to provide annual wage or salary increases to their employees to adjust for increases in the cost of living, as measured by the Consumer Price Index (CPI) used for Colorado."

Respondents' Opening Brief at 7 (emphasis added). This summary begs the question: what is the purpose of the Initiative's provision that would prohibit employers from reducing wages or salaries in the event of deflation? In summarizing the purpose of the Initiative, the proponents of the measure implicitly concede the fact that the Initiative violates the single purpose requirement.

There are two unrelated purposes grouped under the broad theme of requiring employers to provide an annual wage or salary increase to account for the cost of living. The prohibition of wage decreases is a second subject. It is a distinct purpose that has been added to the stated purpose of the Initiative, which will not carry out the objective of the Initiative. *See Waters Rights II*, 898 P.2d 1076, 1079 (Colo. 1995).

This Initiative is similar to the one that this Court rejected in *Waters Rights II*. There, an initiative sought to add a "strong public trust doctrine regarding Colorado waters, that water conservancy and water districts hold elections to change their boundaries or discontinue their existence, that the districts also hold elections for directors and that there be dedication of water right use to the public." *Id.* at 1077. The Court held that the initiative violated the single subject provision because there was no connection between the two district election requirements paragraphs and the two public trust water rights paragraphs. The common characteristic that the paragraphs all

involved water was too general and too broad to constitute a single subject. *See id.*

Similarly, *In the Matter of the Title, Ballot Title and Submission Clause, for 2007-2008 #17*, 172 P.3d 871, 873–74 (Colo. 2007) held that Initiative #17 was violative of the single subject requirement by creating a department of environmental conservation **and** mandating a public trust standard for that department. The Title Board argued that the creation of the department and the standards to be applied to it was a “single subject,” but the Court was not persuaded. *See id.*

The key to this Initiative is that a rise in the cost of living should be reflected in Coloradans’ wages or salaries. An annual wage increase in response to a rising CPI is one distinct purpose, while the prohibition on employers of decreasing wages or salaries when the CPI declines, is a second. The first concept is a guarantee that wages will keep pace with inflation; the actual cost of living. The second is unconnected to the first and does not coincide with the claimed purpose of the Initiative. It prevents business owners from setting wages and salaries according to what the market will bear and requiring payment of wages that do not coincide with the actual cost of living.

“The CPI measures inflation as experienced by consumers in their day-to-day living expenses.” www.bls.gov/cpi/cpifaq. “Inflation has been defined as a process of continuously rising prices or equivalently, of a continuously falling value of

money.” In contrast, “[d]eflation is said to occur when the CPI value in one period is less than its value in the previous period.” <http://gbr.pepperdine.edu/033/> deflation. When the CPI value declines, consumers are able to buy more goods with less money. *See* www.businessdictionary.com.

If the economy were to go through a long-term deflationary period, the cost of goods would decrease. Not only would consumers pay less for “a basket of goods,” their employers would likely earn less from selling those goods. In such a situation, employers may be trapped paying inflated wages and salaries that they cannot afford.

The respondents should not be allowed to bootstrap a prohibition to a decrease of wages and salaries with a guaranteed, annual cost of living increase in times of rising costs. The purpose of freezing wages and salaries to reflect an out-of-date, higher cost of living measurement is a distinguishable subject from a wage or salary increase, in response to an actual increase in the cost of living. The prevention of a decrease in wages in response to a decrease in measured economic conditions is a separate subject.

Respectfully submitted this 12th day of June, 2008.

FAIRFIELD AND WOODS, P.C.

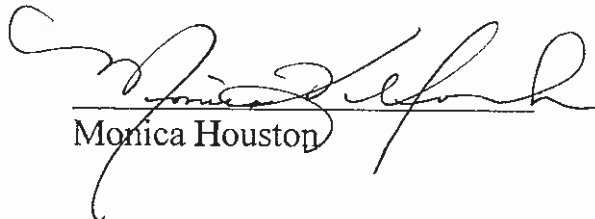
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June, 2008, a true and correct copy of the foregoing **PETITIONER'S ANSWER TO RESPONDENTS' OPENING BRIEF** was hand delivered to the following:

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